

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

CALVIN MAYS, JR., #150299,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:06cv532-ID
	)	
OLA B. JOHNSON, et al.,	)	
	)	
Defendants.	)	

**ORDER**

On August 10, 2006, Plaintiff Calvin Mays, Jr., filed a motion for certificate of appealability (Doc. No. 8), which the court construes as a notice of appeal from the court's order and judgment entered on July 27, 2006 (Doc. Nos. 6-7) and motion to proceed on appeal *in forma pauperis*.<sup>1</sup> See Smith v. Barry, 502 U.S. 244, 248-49 (1992).

28 U.S.C. § 1915(a) provides that “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” In making this determination as to good faith, the court must use an objective standard, such as whether the appeal is “frivolous,” Coppedge v. United States, 369 U.S. 438, 445 (1962), or “has no substantive merit.” United States v. Bottoson, 644 F.2d 1174, 1176 (5<sup>th</sup> Cir. Unit B. May 15, 1981) (per curiam).

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<sup>1</sup> Because May's lawsuit is a civil rights action brought pursuant to 42 U.S.C. § 1983, Mays does not require a certificate of appealability. See Robinson v. Thorpe, No. 5:06-CV-191(Df), 2006 WL 2051387, \*1 n.1 (M.D. Ga. 2006).

Applying this standard, the court is of the opinion, for the reasons stated in the recommendation of the magistrate judge, that Mays' appeal is without a legal or factual basis, and, thus, is frivolous and not taken in good faith. See Rudolph v. Allen, 666 F.2d 519, 520 (11<sup>th</sup> Cir. 1982) (per curiam). Accordingly, it is

CONSIDERED and ORDERED that Mays' motion to proceed on appeal *in forma pauperis* be and the same is hereby DENIED and that the appeal in this cause is hereby certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE this 15<sup>th</sup> day of August, 2006.

/s/ Ira DeMent

SENIOR UNITED STATES DISTRICT JUDGE